IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1879 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GAMBHIRSINH BACHUSINH CHAVDA THRO WIFE BHARTIBEN G CHAVDA
Versus
COMMISSIONER OF POLICE

Appearance:
1. Special Civil Application No. 1879 of 2001
MR NM KAPADIA for Petitioner No. 1
MR K.T.DAVE, AGPfor Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Surat

City, Surat, vide order dated January 31, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. From the averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 2 offences under Chapter 16 of the IPC are registered against the petitioner which are pending at investigation stage and statements of two witnesses were recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds. Mr N.M.Kapadia, learned advocate for the petitioner has restricted his arguments to the effect that so far as two offences registered against the petitioner are concerned, they do not reflect the disturbance of the public order, they only reflect the disturbance of law and order situation. Secondly, privilege claimed under Section 9(2) of the Act by not disclosing the names of the witnesses is not genuine and therefore, the detention order deserves to be quashed and set aside.

5. Mr. K.T.Dave, learned AGP appearing for the respondent State has opposed the petition. However, he does not dispute the factual aspect with regard to the fact that the offences registered against the petitioner reflect the disturbance of the law and order and not the disturbance of public order. He also conceded that so far as privilege claimed under Section 9(2) of the Act is concerned, considering the situation, the names of the witnesses were not disclosed. Therefore, privilege has rightly claimed. He urged to pass appropriate order in light of the settled principles laid down by this Court.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order, there is no manner of doubt that the detaining authority has considered the two offences which are registered against the petitioner punishable under IPC. There is also no manner of doubt that the offences disclosed therein are not relating to disturbance of public order and it only reflects the disturbance of law and order situation. Since there is no disturbance of public order, the reason assigned by the detaining authority is not genuine. So far as second aspect with regard to the claiming of the privilege under Section 9(2) is concerned, in the absence of affidavit in reply, it cannot be said that the privilege claimed by the detaining authority is genuine by not disclosing the names of the witnesses. On overall view of the matter, the order of detention deserves to be vitiated and petition deserves to be allowed.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 31, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*